

FETAL ALCOHOL SPECTRUM DISORDERS AND JUVENILE JUSTICE: HOW PROFESSIONALS CAN MAKE A DIFFERENCE



[T]here is hope. We can change how lawyers, clients, police, judges, probation officers, prison guards, and family members work with FAS clients.¹

—David Boulding, attorney for clients with fetal alcohol spectrum disorders

Young people who are affected by fetal alcohol spectrum disorders (FASD) are at increased risk for involvement with the juvenile justice system.^{2,3} Most youth who have an FASD have never received a diagnosis or services, and they reach the system after a long fall through the cracks.

HOW IS FASD LINKED TO PROBLEMS WITH THE JUVENILE JUSTICE SYSTEM?

Youth with an FASD were born with brain damage that can make it difficult for them to stay out of trouble with the law. They do not know how to deal with police, attorneys, judges, social workers, psychiatrists, corrections and probation officers, and others they may encounter.

Professionals who work with the court system can reach out to young people who may have an FASD to ensure that they receive needed help. Education and training can help professionals identify young people who may have an FASD. This can help them get fair treatment and appropriate services.

WHAT IS FASD?

“FASD” is an umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications.

The term FASD is not used as a clinical diagnosis. It refers to conditions such as fetal alcohol syndrome (FAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD). FASD occurs in about 10 per 1,000 live births, or about 40,000 babies per year in the United States.⁴

WHAT ARE THE CHALLENGES FOR YOUTH WITH AN FASD?

FASD’s effects on the brain can result in cognitive or behavioral deficits. These deficits may include mental retardation, learning disabilities, hyperactivity, attention deficits, and poor social skills. These and other problems associated with FASD may increase the chance that a person will break the law.

Individuals with an FASD typically are impulsive and have trouble foreseeing the consequences of their actions. They

may have a poor sense of personal boundaries. Many are very susceptible to peer pressure and can be easily led. Their judgment is often poor.²

FASD also presents challenges throughout the judicial process, from questioning through arrest, hearings, sentencing, and detention. Many youth who have an FASD have poor communication skills, while others may “talk” much better than they can function. They may become confused under pressure. They often cannot understand their rights and may confess or otherwise implicate themselves and others, even if they are not guilty. Youth who have an FASD may believe that if they confess, they will be allowed to go home. They also want people to like them and may provide a false confession in an effort to please the police.

Youth who have an FASD typically have memory problems, which can contribute to forgotten court dates or meetings with probation officers, judges, and attorneys. Their risk for victimization in detention is high, as they may fall prey to other inmates.

It can be difficult for persons with an FASD to learn from their mistakes. Because the judicial process can be lengthy, they may not draw a connection between their actions and the later consequences. Once released from detention, youth who have an FASD may commit similar offenses and cycle through the system again and again.

HOW CAN THE SYSTEM HELP YOUTH WITH AN FASD?

Youth should be screened for FASD at all entry points into the juvenile justice system. Those who work in the system, especially attorneys and social workers, should look for a history of behavior that suggests an FASD. They also should ask questions about prenatal exposure to alcohol. When they suspect that an FASD is present, they should request a complete

WHAT YOU NEED TO KNOW



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Prevention
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evaluation by clinicians qualified to diagnose an FASD. The evaluation should include assessments of possible co-occurring psychiatric disorders and adaptive behavior.⁵

Attorneys should be aware of FASD and use their knowledge to advocate effectively for their clients, particularly in proceedings related to:

- Competency—Youth with an FASD may be unable to understand the charges against them and participate in their own defense.
- Diminished capacity—Young people with an FASD may find it difficult to distinguish right from wrong, form intent to commit an offense, and understand consequences.
- Decisions to decline/remand/waive—Youth with an FASD are likely to be safer in a juvenile facility than in an adult prison due to potential victimization.
- Sentencing—In some cases, attorneys may be successful in presenting FASD as a mitigating or exculpatory factor. They also should explore alternative sentencing options.
- Treatment—Court-ordered treatment is sometimes the only way for youth with an FASD to receive appropriate interventions.

Information from evaluations, medical records, family history, and school and employment records should be included in presentencing investigations. The outcome may influence whether or not the youth will be detained, where, for how long, and what support he or she will receive. Appropriate services are essential, including medication or substance abuse treatment (if necessary), vocational training, life skills training, mentoring, and advocacy.

Detention of youth with an FASD may be unproductive. It can increase the risk of recidivism because they may copy the deviant behavior of other juveniles. For probation or aftercare, a highly supervised, structured living arrangement is critical for success. People with an FASD often have difficulty managing their money or tending to household chores. Attorneys should ensure that clients who were receiving developmental disabilities support do not lose their benefits while they are in the system.^{6,7}

Throughout the judicial process, communication with young people who have an FASD should be concrete, simple, and repetitive. Youth with an FASD have trouble following multistep instructions and understanding figures of speech. Using frequent reminders, visual cues, and open-ended questions can help them follow rules and understand what is happening.

FASD is not an excuse for breaking the law. However, all youth, including those with an FASD, deserve to be treated fairly by the juvenile justice system. Increased awareness and action at all levels of the system can offer a lifeline to young people with an FASD. In addition, the potential benefits to society, through decreased crime and costs, are tremendous.

ADDITIONAL RESOURCES

SAMHSA FASD Center for Excellence. 2005. **What You Need To Know: Understanding Fetal Alcohol Spectrum Disorders: Getting a Diagnosis.** Rockville, MD: fasdcenter.samhsa.gov

Minnesota Organization on Fetal Alcohol Syndrome. **Tools for Success: Working With Youth With Fetal Alcohol Syndrome and Effects in the Juvenile Justice System Resource Guide.** www.mofas.org

REFERENCES

1. Boulding, D. 2001. Mistakes I Have Made With Fetal Alcohol Syndrome Clients: Fetal Alcohol Syndrome and Fetal Alcohol Effects in the Criminal Justice System. depts.washington.edu/fadu/legalissues/Mistakes.pdf
2. Streissguth, A., and Kanter, J., eds. 1997. *The Challenge of Fetal Alcohol Syndrome: Overcoming Secondary Disabilities.* Seattle: University of Washington Press.
3. Fast, D.K.; Conry, J.; and Looek, C. 1999. Identifying fetal alcohol syndrome among youth in the criminal justice system. *Journal of Developmental and Behavioral Pediatrics* 20:370-372.
4. May, P.A., and Gossage, J.P. 2001. Estimating the prevalence of fetal alcohol syndrome: A summary. *Alcohol Research & Health* 25(3):159-167.
5. LaDue, R, and Dunne, T. 1996. Capacity concerns and fetal alcohol syndrome. *The FEN Pen* 4(1):2-3.
6. LaDue, R, and Dunne, T. 1997. Fetal alcohol syndrome: Implications for sentencing in the criminal justice system. *The FEN Pen* 5(2):2-3.
7. Streissguth, A. 1998. Attaining human rights, civil rights, and criminal justice for people with fetal alcohol syndrome. *TASH Newsletter* September:18-20.

Stop and think. If you're pregnant, don't drink.

For more information, visit fasdcenter.samhsa.gov or call 866-STOPFAS.

www.stopalcoholabuse.gov



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